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SAN DIEGO UNIFIED PORT DISTRICT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FIRST STATE INSURANCE COMPANY, A Connecticut corporation, Plaintiff, vs. SAN DIEGO UNIFIED PORT DISTRICT, a public agency, Defendant.	Case No.: 08 CV 1046 L RBB **DEFENDANT'S ANSWER TO PLAINTIFF FIRST STATE INSURANCE COMPANY'S COMPLAINT FOR DECLARATORY JUDGMENT** **JURY DEMANDED**

Defendant SAN DIEGO UNIFIED PORT DISTRICT, (hereinafter "Defendant") answers the complaint of FIRST STATE INSURANCE COMPANY'S (hereinafter "Plaintiff") as follows:

1. Answering Paragraph 1 of the Complaint, this paragraph contains recitals regarding the nature of the suit and contains no factual allegations that require defendant's admission or denial.

2. Answering Paragraph 2 of the Complaint, the defendant admits the allegations in this paragraph.

3. Answering Paragraph 3 of the Complaint, the defendant admits the allegations in this paragraph.

4. Answering Paragraph 4 of the Complaint, the defendant admits the allegations in this paragraph.

5. Answering Paragraph 5 of the Complaint, the defendant admits the allegations in this paragraph.

6. Answering Paragraph 6 of the Complaint, the defendant admits the allegations in this paragraph.

7. Answering Paragraph 7 of the Complaint, the defendant admits the allegations in this paragraph.

8. Answering Paragraph 8 of the Complaint, the defendant admits the allegations in this paragraph.

9. Answering Paragraph 9 of the Complaint, the defendant admits the allegations in this paragraph.

10. Answering Paragraph 10 of the Complaint, the defendant admits the allegations in this paragraph.

11. Answering Paragraph 11 of the Complaint, the defendant admits the allegations in this paragraph.

12. Answering Paragraph 12 of the Complaint, the defendant admits the allegations in this paragraph.

13. Answering Paragraph 13 of the Complaint, the defendant denies the allegations that it has not been ordered to participate in the proceedings and that its participation has been voluntary.

14. Answering Paragraph 14 of the Complaint, the defendant denies that the DIC Policies provide gap coverage for "claims not otherwise covered by the Port of San Diego's comprehensive general liability policy program". The defendant admits the remaining allegations in this paragraph.

15. Answering Paragraph 15 of the Complaint, the defendant admits that the DIC Policies contain the provision quoted therein, but deny the allegation that the defense obligation is limited under the DIC Policies to "suits" for damages.

16. Answering Paragraph 16 of the Complaint, the defendant admits the allegations in this paragraph.

17. Answering Paragraph 17 of the Complaint, the defendant admits that the policies contain the language quoted in this paragraph, but denies that First State's obligations under the policy are strictly and unambiguously limited to "damages."

18. Answering Paragraph 18 of the Complaint, the defendant admits the allegations in this paragraph.

19. Answering Paragraph 19 of the Complaint, the defendant denies that its participation in the CRWQCB proceedings has been voluntary, but admits the remaining allegations in this paragraph.

20. Answering Paragraph 20 of the Complaint, the defendant lacks sufficient knowledge and information to form a belief as tot the truth of the allegations contained in this paragraph.

21. Answering Paragraph 21 of the Complaint, this paragraph contains no factual allegations that require defendant's admission or denial.

22. Answering Paragraph 22 of the Complaint, the defendant admits that the policy provision contains the quoted language, but denies that First State's obligations are strictly and unambiguously limited to a "suit."

23. Answering Paragraph 23 of the Complaint, the defendant admits that the CRWQCB investigations and proceedings to date do not constitute a "suit" under *Foster-Gardner, Inc. v. National Union Fire Insurance Company*, but defendant denies any implied allegation that these proceedings could never become a "suit".

24. Answering Paragraph 24 of the Complaint, the defendant admits that it has not yet "been joined in a 'suit'", but denies the remaining allegations in this paragraph.

25. Answering Paragraph 25 of the Complaint, the defendant admits that the identified policy provision sets forth First State's obligation to defend certain types of claims, but denies that First State's obligation to defend claims is limited to the circumstances identified in that policy provision. The defendant also admits that the CRWQCB proceedings to date have not sought to impose punitive damages as so called, but denies that the defendant's prospective liability exposure under the proceedings do not

potentially include fines and penalties that are the legal equivalent of punitive damages.

26. Answering Paragraph 26 of the Complaint, the defendant denies the allegations in this paragraph.

27. Answering Paragraph 27 of the Complaint, this paragraph contains no factual allegations that require defendant's admission or denial.

28. Answering Paragraph 28 of the Complaint, the defendant admits that the identified policy provision contains the quoted language, but denies that First State's obligations under the policy are limited to the circumstances of this policy provision.

29. Answering Paragraph 29 of the Complaint, the defendant denies that the CRWQCB proceedings do not constitute "damages" as that term is used in the First State policy.

30. Answering Paragraph 30 of the Complaint, the defendant admits the allegations in this paragraph.

31. Answering Paragraph 31 of the Complaint, the defendant denies the allegations in this paragraph.

32. Answering Paragraph 32 of the Complaint, this paragraph contains no factual allegations that require defendant's admission or denial.

33. Answering Paragraph 33 of the Complaint, the defendant admits that the policies afford coverage for claims not covered by the defendant's general liability insurance policies for the same policy period, but denies the allegation that coverage under the First State policies requires non-coverage under all of defendant's other policy periods and further denies all other allegations in this paragraph.

34. Answering Paragraph 34 of the Complaint, the defendant denies the allegations in this paragraph.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

35. As a first affirmative defense, First State's complaint and the counts alleged therein do not state a claim upon which relief can be granted against the defendant.

SECOND AFFIRMATIVE DEFENSE

36. As a second affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

37. As a third affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the doctrine of equitable estoppel.

FOURTH AFFIRMATIVE DEFENSE

38. As a fourth affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

39. As a fifth affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the doctrine of detrimental reliance.

SIXTH AFFIRMATIVE DEFENSE

40. As a sixth affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

41. As a seventh affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the insuring language of First State's policies.

EIGHTH AFFIRMATIVE DEFENSE

42. As an eighth affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, by the terms, conditions and/or other provisions in the policies.

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NINTH AFFIRMATIVE DEFENSE

43. As a ninth affirmative defense, First State's complaint and the counts alleged therein are barred, in whole or in part, as the policies do not limit First State's defense obligations to "suits" but also encompass the defense of "claims."

TENTH AFFIRMATIVE DEFENSE

44. Defendant reserves the right to raise additional affirmative defenses pending information learned through discovery and related efforts with regard to this action.

PRAYER FOR RELIEF

WHEREFORE, defendant respectfully requests:

1. That First State take nothing by reason of its complaint and that judgment be rendered in favor of defendant regarding the subject of the requested declarations;

2. That defendant be awarded its costs of suit incurred in defense of this action; and

3. For such other relief as the Court deems proper.

Dated: July 2, 2008

BROWN & WINTERS

By: ______________________

SCOTT E. PATTERSON, ESQ.
Attorneys for Plaintiff,
SAN DIEGO UNIFIED PORT DISTRICT

Attorney or party without attorney (Name and Address): TELEPHONE NO: (760) 633-4485
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ATTORNEY FOR (Name): **THE SAN DIEGO UNIFIED PORT DISTRICT**

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
940 Front Street
San Diego, CA 92101

PLAINTIFF(S)/PETITIONER(S): **FIRST STATE INSURANCE COMPANY**

DEFENDANT(S)/RESPONDENT(S): **SAN DIEGO UNIFIED PORT DISTRICT**

PROOF OF SERVICE BY MAIL
(CCP 1013(a)(1) & (3) & Local Rules, Division II, Rule 5.2C)

CASE NUMBER:
08 CV 1046 L RBB

I, **the undersigned**, declare that: I am over the age of 18 years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the mailing occurs; and my business/residence address is: 120 Birmingham Drive, Suite 110, Cardiff By The Sea, California 92007.

☒ I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document(s): (SET FORTH THE EXACT TITLE OF THE DOCUMENT(S) SERVED AND FILED):

DEFENDANT'S ANSWER TO PLAINTIFF FIRST STATE INSURANCE COMPANY'S COMPLAINT FOR DECLARATORY JUDGMENT

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows: *(For civil cases, specify the name of the party so served, the nature and status of the party's involvement in the case, i.e. plaintiff, defendant, cross-complainant, etc.; and the name, address and phone number of the party's counsel of record, if any.)*

SEE ATTACHED LIST

I then sealed each envelope and, with postage thereon fully prepaid,

☐ I deposited each in the United States Postal Service at Cardiff, California.

☒ I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 7, 2008** **Signature:** *[signature]*
Ardis Seidel

First State Insurance Company v. San Diego Unified Port District
United States District Court Southern District of California
Case No. 08 CV 1046 L RBB

MAILING LIST

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